

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JENNIFER CHRISTENSEN, et al .,

Plaintiff(s),

vs.

OCWEN LOAN SERVICING, LLC, et al.,

Defendant(s).

Case No. 2:16-cv-01200-GMN-NJK

ORDER

(Docket No. 22)

Pending before the Court is Defendant Bank of America's motion to stay discovery pending resolution of its motion to dismiss. Docket No. 22; *see also* Docket No. 8 (motion to dismiss). Plaintiffs filed a response in opposition, and Bank of America filed a reply. Docket Nos. 28, 29. The Court finds the matter properly resolved without oral argument. *See* Local Rule 78-1. For the reasons discussed below, the motion to stay is hereby **DENIED**.

The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). "The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). The party seeking a stay carries the heavy burden of making a strong showing why discovery should be denied. *See, e.g., Turner Broadcasting Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). The case law in this District makes clear that requests to stay all discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken

1 a “preliminary peek” at the merits of the potentially dispositive motion and is convinced that the plaintiff
 2 will be unable to state a claim for relief. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D.
 3 Nev. 2013).¹

4 The Court finds that a stay of discovery is not appropriate in this case.² Most significantly, the
 5 Court has taken a preliminary peek at the motion to dismiss and is not convinced that Plaintiffs will be
 6 unable to state a claim. It bears repeating that the filing of a non-frivolous dispositive motion, standing
 7 alone, is simply not enough to warrant staying discovery. *See, e.g., Tradebay*, 278 F.R.D. at 603.
 8 Instead, the Court must be “convinced” that the dispositive motion will be granted. *See, e.g., id.* “That
 9 standard is not easily met.” *Kor Media*, 294 F.R.D. at 583. “[T]here must be *no question* in the court’s
 10 mind that the dispositive motion will prevail, and therefore, discovery is a waste of effort.” *Id.* (quoting
 11 *Trazska v. Int’l Game Tech.*, 2011 WL 1233298, *3 (D. Nev. Mar. 29, 2011)) (emphasis in original).
 12 The Court requires this robust showing that the dispositive motion will succeed because applying a
 13 lower standard would likely result in unnecessary delay in many cases. *Id.* (quoting *Trazska*, 2011 WL
 14 1233298, at *4). The Court has carefully reviewed the arguments presented in the motion to dismiss
 15 and subsequent briefing. The Court is simply not convinced that Plaintiffs will be unable to state a
 16 claim, such that conducting discovery will be a waste of effort.

17 Accordingly, the motion to stay discovery is hereby **DENIED**.

18 IT IS SO ORDERED.

19 DATED: August 17, 2016

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 NANCY J. KOPPE
 United States Magistrate Judge

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 23 ¹ Conducting this preliminary peek puts the undersigned in an awkward position because the assigned
 24 district judge who will decide the motion to dismiss may have a different view of its merits. *See Tradebay*,
 25 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that motion is not intended to
 prejudice its outcome. *See id.*

26 ² As a threshold issue, the Court notes that no other defendant joined in the motion to dismiss. *Cf.*
 27 Docket No. 12 (Experian’s answer). As such, any stay stemming from Bank of America’s motion to dismiss
 28 would be limited to discovery involving Bank of America. *See, e.g., White v. American Tobacco Co.*, 125
 F.R.D. 508, 509 (D. Nev. 1989).